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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,518	11/29/2003	Peter A. Williams	13768.783.55	8911

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EXAMINER

GOODCHILD, WILLIAM J

ART UNIT	PAPER NUMBER
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2145

MAIL DATE	DELIVERY MODE
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07/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/724,518	WILLIAMS ET AL.	
	Examiner William J. Goodchild	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration:
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claims 1-19 are objected to because of the following informalities:

Claim 1, line 12, the phrase “a time value” has been defined in claim 1, line 9, it is suggested to change the phrase to –said time value--, in order to improve the clarity of the claim language. Claims 7 and 8 require similar corrections.

Claim 3, line 1, the phrase “download regulation data” has been defined in claim 1, line 3, it is suggested to change the phrase to –said download regulation data--, in order to improve the clarity of the claim language.

Claim 3, line 2, the phrase “an acceptance value” has been defined in claim 1, line 4, it is suggested to change the phrase to –said acceptance value--, in order to improve the clarity of the claim language.

Claim 3, line 3, the phrase “a time-window set” has been defined in claim 1, line 4, it is suggested to change the phrase to –said time-window set--, in order to improve the clarity of the claim language.

Claim 11, line 6, the phrase “clients” has been defined in claim 11, line 5, it is suggested to change the phrase to –said clients--, in order to improve the clarity of the claim language. Claims 13-17 require similar corrections.

Claim 17, line 4, the phrase “download regulation data” has been defined in claim 11, line 4, it is suggested to change the phrase to –said download regulation data--, in order to improve the clarity of the claim language.

Claim 19, line 10, the phrase “a time value” has been defined in claim 19, line 4, it is suggested to change the phrase to –said time value--, in order to improve the clarity of the claim language.

Any claim not specifically addressed above, is being objected to as incorporating the deficiencies of a claim upon which it depends.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5, 10-13, 16-17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Moshir et al., (hereinafter Moshir), (US Publication No. 2002/0100036).

In reference to claim 1, Moshir teaches a method / system comprising:

(a) communicating a content-related request, and in response, receiving download regulation data corresponding to an acceptance value and a time-window set containing at least one time value, (paragraph 60, lines 3-4 and paragraph 62, lines 4-13);

(b) determining based on a current acceptance value whether to request the content or whether to back off for a wait time before requesting the content, the wait time corresponding to a time value in the time-window set, (paragraph 62, lines 4-13); and

(i) when the determination result is to request the content, downloading the content for a download time, the download time corresponding to a time value in the time-window set, (paragraph 62, lines 4-13), and

(ii) when the determination result is to back off, delaying downloading of the content for the wait time, (paragraph 62, lines 4-9).

In reference to claim 2, Moshir teaches the method of claim 1 wherein: the time value is the same for the download time and the wait time, (paragraph 62, lines 4-9).

In reference to claim 3, Moshir teaches the method of claim 1 wherein: receiving download regulation data corresponding to an acceptance value and a time-window set comprises receiving a URL to a download regulation file, (paragraph 59, lines 8-11 and 14-15).

In reference to claim 5, Moshir teaches the method of claim 1 wherein:

the determination result is to back off, and wherein after delaying downloading of the content for the wait time, further comprising repeating (a) and (b), (paragraph 61, lines 7-10).

In reference to claim 10, Moshir teaches the method of claim 1 wherein:

A computer-readable medium having computer-executable instructions, which, when executed, perform the method of claim 1, (paragraph 51).

Claims 11-13, 16-17 and 19-20 are similar in scope as that of claims 1-3, 5 and 10. Therefore, they are rejected under Moshir for the same reasons set forth in the rejection of claims 1-3, 5 and 10.

4. Claims 1, 4, 6-9, 11, 14-17 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Tarbutton et al., (hereinafter Tarbutton), (US Patent No. 7,013,330).

In reference to claim 1, Tarbutton teaches a method comprising:

(a) communicating a content-related request, and in response, receiving download regulation data corresponding to an acceptance value and a time-window set containing at least one time value, (column 6, lines 52-61);

(b) determining based on a current acceptance value whether to request the content or whether to back off for a wait time before requesting the content, the wait time corresponding to a time value in the time-window set, (column 7, lines 42-56); and

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- (i) when the determination result is to request the content, downloading the content for a download time, the download time corresponding to a time value in the time-window set, (column 8, lines 22-40), and
- (ii) when the determination result is to back off, delaying downloading of the content for the wait time, (column 8, lines 22-40).

In reference to claim 4, Tarbotton teaches the method of claim 1 wherein: determining whether to request the content or whether to back off comprises, generating a random number and comparing the random number with a number corresponding to the acceptance value, (column 8, lines 24-32).

In reference to claim 6, Tarbotton teaches the method of claim 1 wherein: the determination result is to download, wherein the content is not completely downloaded within the download time, and further comprising repeating (a) and (b) at least once to resume downloading until the download is complete, (column 8, lines 12-32).

In reference to claim 7, Tarbotton teaches the method of claim 1 further comprising:

setting the wait time corresponding to a time value in the time-window set by obtaining the time value from the time-window set and varying the obtained time value by a random time amount, (column 8, lines 22-32).

In reference to claim 8, Tarbotton teaches the method of claim 1 further comprising:

setting the download time corresponding to a time value in the time-window set by obtaining the time value from the time-window set and varying the obtained time value by a random time amount, (column 8, lines 22-32).

In reference to claim 9, Tarbotton teaches the method of claim 1 wherein: the determination result is to back off, and wherein after delaying downloading of the content for the wait time, further comprising, obtaining another acceptance percentage value from the download regulation data, setting that other acceptance percentage value as the current acceptance percentage value, and repeating step (b), (column 8, lines 12-32).

Claims 11, 14-17 and 19-20 are similar in scope as that of claims 1, 4 and 6-9. Therefore, they are rejected under Moshir for the same reasons set forth in the rejection of claims 1, 4 and 6-9.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Goodchild whose telephone number is (571) 270-1589. The examiner can normally be reached on Monday - Friday / 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WJG
07/20/2007



JASON CARDONE
SUPERVISORY PATENT EXAMINER